

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:08 CR 27**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
DONALD STEPHEN SCOTT.)	
)	
_____)	

THIS CAUSE coming on to be heard and being heard before the undersigned for the purpose of conducting a Rule 11 inquiry and entering an Order of Acceptance of Plea. After the completion of the Rule 11 proceeding, the undersigned then addressed the issue of whether or not the defendant should now be detained pursuant to 18 U.S.C. § 3143(a)(2).

From the arguments of counsel for the defendant and arguments of the Assistant United States Attorney and the records in this cause, the court makes the following findings:

Findings. On August 5, 2008 an indictment was issued charging the defendant in count one with a violation of 18 U.S.C. § 2252(a)(1) and in counts two through fourteen with violations of 18 U.S.C. § 2252(a)(2) and in the final count, that being count fifteen, with a violation of 18 U.S.C. § 2252(a)(4)(b). On December 4, 2008, the defendant entered pleas of guilty to all of the offenses described in the bill

of indictment. All of these offenses are those as are set forth under Chapter 110 of Title 18 of the United States Code.

Discussion. The issue that arises as a result of the defendant's plea is whether or not the court should now apply the factors as set forth under 18 U.S.C. § 3143(a)(2) and detain the defendant.

18 U.S.C. § 3143(a)(2) provides as follows:

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless ----

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; or

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

From an examination of the records in this cause, it appears that the defendant has entered pleas of guilty as set forth above. Those pleas of guilty are each a plea of guilty to "a crime of violence" as set forth under 18 U.S.C. § 3156. A crime of violence is a qualifying crime as set forth under 18 U.S.C. § 3142(f)(1)(A). From the evidence the undersigned finds there is not a substantial likelihood that a motion for acquittal and a new trial will be granted in regard to the charges against the

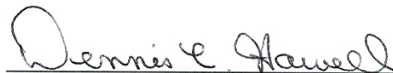
defendant. The defendant has now entered conditional pleas of guilty to all offenses. The undersigned further finds that an attorney for the government has not recommended that no sentence of imprisonment be imposed on the defendant. It would thus appear and the court is of the opinion that the court should apply the factors as set forth under 18 U.S.C. § 3143(a)(2) which require the detention of the defendant.

As a result of the foregoing and pursuant to the mandatory language of 18 U.S.C. § 3143(a)(2), the undersigned must order that the defendant be detained pending sentencing in this matter. In the event there is an appeal and to assist the District Court no evidence has presented to show that the defendant has violated any term and condition of pretrial release that had been previously issued in this matter.

ORDER

IT IS, THEREFORE, ORDERED, the defendant be detained pending sentencing in this matter or pending further orders of the District Court.

Signed: December 9, 2008



Dennis L. Howell
United States Magistrate Judge

